REMARKS

This amendment is being filed by the applicant *pro se* following a Non-final Office Action dated September 10, 2007 and a personal interview with the Examiner and Supervisory Examiner on November 21, 2007.

Prior to the personal interview a "Draft Amendment For Interview" was faxed to the Examiner on October 30, 2007 for "discussion/interview purposes", and a copy was presented during the personal interview with the Examiner and Supervisory Examiner on November 21, 2007. The October 30, 2007 "Draft Amendment For Interview" was clearly presented as a proposed draft amendment only for purposes of discussion and was not intended to be published for the record. However, the October 30, 2007 "Draft Amendment For Interview" has been published in the "Public Pair" in an entry in the "Image File Wrapper" dated October 30, 2007. It is respectfully requested that the proposed October 30, 2007 "Draft Amendment For Interview" be removed from the "Public Pair" database and not be published for the record.

In the September 10, 2007 office action, claim 53 was rejected under 35 USC 112, second paragraph, because there was insufficient antecedent basis for the term "said arch strap". Claim 53 has been amended to supply the proper antecedent basis, and it is respectfully submitted that claim 53, as now amended, overcomes the section 112 rejection.

In the September 10, 2007 office action, claims 44, 45, 46, 56, 62 and 66 were rejected under 35 U.S.C. §102(e) as being anticipated by Burgess (US 6,640,465). Claims 44, 48-54, and 56-61 were rejected under 35 U.S.C. §103(a) as being unpatentable over Turtzo (20020188239 - now US 6,699,209) in view of Burgess. Claim 47 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Huddleston et al (US 4,997,709). Claim 55 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Dalton (20040118017 - now US 7,107,705). Claims 63, 64, and 65 were rejected under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Turtzo.

During the November 21, 2007 interview with the Examiner and Supervisory Examiner, a copy of the proposed October 30, 2007 "Draft Amendment For Interview" and the prior art of record (Burgess, Turtzo, Huddleston et al, and Dalton, particularly with respect to base claims 44 and 56. An agreement with respect to proposed amendments to claims 44 and 56 was reached.

More particularly, claims 44 and 56, if amended to include the quality of adhesive to intended use limitation and thin flexible stretch resistant sole member limitation, would read over the Turtzo reference, and favorable consideration would be given upon further updated search.

It is respectfully submitted that the combination of structural and functional features, as now set forth in the amended claims, include the quality of adhesive and thin flexible stretch resistant sole member as discussed in the interview.

Base claim 44, as currently amended, defines applicant's invention as an orthotic foot support device for a human foot, comprising: a foot support device having a thin flexible stretch-resistant sole member with a sole engaging surface sized and shaped to engage the outer skin tissue on at least a portion the sole of the foot and extend along at least a portion of the plantar fascia region of the sole, in the region of the foot extending from the heel to the distal end of the toes, excluding the portion of the foot under the four small toes; and an adhesive layer on said sole engaging surface for adhering said device directly to the outer skin tissue on the sole of the foot, and [[a]] at least one protective cover removeably disposed over said adhesive layer which, when removed, exposes said adhesive layer; wherein, said stretch-resistant ~~device~~ sole member sufficiently stretch-resistant to restrict extension and stretching of the outer skin tissue on the sole of the foot, when adhered thereto, and said adhesive layer of sufficient adhesive strength to maintain said stretch-resistant sole member in place on the outer skin tissue on the sole of the foot, such that tension forces applied to the plantar fascia ~~from forces on the arch of the foot which push the bones of the foot downwardly~~ are shared with said ~~device~~ outer skin tissue, said adhesive layer, said sole engaging surface, and said stretch-resistant sole member to restrict extension and stretching of the outer skin tissue of the sole of the foot and to restrict stretching of the plantar fascia, whereby preventing excessive tensile stress in the plantar fascia.

Support for the thin flexible stretch-resistant sole member terminology and its function is found in paragraphs 0018, 0059, and 0069, of the application as originally filed, and does not constitute new matter. Support for the adhesive properties and its function is found in paragraphs 0028, 0029, 0031, and 0040 of the application as originally filed, and does not constitute new matter.

The rejection under 35 U.S.C. 102(e)

For a claimed invention to be properly rejected under 35 U.S.C. 102, the claimed invention must be completely described or illustrated within the four corners of a single prior art reference. The Seventh Circuit has also stated that:

> "anticipation is strictly a technical defense...unless all of the same elements [of the sought-to-be patented device] are found [in a single prior art reference] in exactly the same situation and united in the same way to perform an identical function, [the former is not anticipated by the latter.]"
> Illinois Tool Works, Inc. v. Sweetheart Plastics, Inc. 436 F.2nd 1180, 1182-83, 168 USPQ 451, 453-454 (7th Cir. 1971).

> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."
> Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

With regard to the rejection of claims 44, 45, 46, 56, 62 and 66 under 35 U.S.C. §102(e) as being anticipated by Burgess (US 6,640,465), it is respectfully submitted that Burgess clearly does not disclose all of the same elements of this invention, as recited in amended claims 44, 45, 46, 56, 62 and 66 **in exactly the same situation and united in the same way to perform an identical function.**

Burgess does not show or suggest an **orthotic** foot support device of a human foot. Instead, Burgess is directed toward a resilient "cushion member", that merely provides comfort and protects the wearer's foot from contact with floor surfaces that may be unsanitary, cold, wet, hot, slippery or otherwise undesirable.

Burgess does not show or suggest a foot support device having a thin flexible stretch-resistant sole member with a sole engaging surface sized and shaped to engage the outer skin tissue on at least a portion the sole of the foot and extend along at least a portion of the plantar fascia region of the sole, in the region of the foot extending from the heel to the distal end of the toes, **excluding the portion of the foot under the four small toes.**

Instead, of "excluding the portion of the foot under the four smaller toes", Burgess teaches "a shape generally matching a shape of a sole of a foot and generally corresponding in size to the foot", thus Burgess extends to all regions of the bottom of the foot, **including the portion under the four smaller toes**. The size and shape of Burgess corresponds to the functional purposes of Burgess, which include: protecting the foot from contact with surfaces of indeterminate

cleanliness and temperature fluctuations and to provide "cushion" or comfort to the user. Burgess "could be slightly larger than or slightly smaller than the foot" but extends to all regions of the bottom of the foot **including the portion under the four small toes,** in order to serve is functional objectives.

Burgess teaches a "resilient" sheet or "cushion member" of substantially uniform thickness (about 1 mm to about 5mm, preferably about 2 mm), and that a thickness of about 1 mm to about 5 results in a foot protector that has enough "resilience, or cushion effect", "to provide comfort to the foot" of the wearer. Burgess teaches "a resilient sheet member, that easily conforms to the contour of a sole of a wearer's foot" which "allows increased mobility" "without inhibiting foot movement". Burgess teaches that, preferably, the tack adhesive used in the adhesive layer is sticky enough to reliably hold the foot protector against the foot, but is not so sticky that it causes difficulty or discomfort in removing the foot protector from the sole of the foot. "The easier it is to remove the foot protector 100 from the sole of the foot 200, the more the wearer can experience the comfort level of a conventional slipper." Burgess teaches "The tack adhesive layer may include any tack adhesive suitable for temporarily attaching the resilient sheet member to the sole of the foot", however the applications suggested for the use of Burgess are rather non-rigorous applications such as use by "a person entering or exiting a spa, a health club, medical facility, going to or from or in a shower at a gym or the like".

Unlike the present invention Burgess does not teach a sole member which is **sufficiently stretch-resistant to restrict extension and stretching of the outer skin tissue on the sole of the foot, when adhered thereto**. Nor does Burgess teach "**an adhesive layer of sufficient adhesive strength to maintain said stretch-resistant sole member in place on the outer skin tissue on the sole of the foot", "to restrict stretching of the outer skin tissue" or "to restrict stretching of the plantar fascia",** whereby preventing excessive tensile stress in the plantar fascia.

As a result of these missing elements Burgess does not teach each and every element of the claimed invention and therefore the Burgess reference does not anticipate this invention.

Burgess expressly teaches that the device performs just the opposite function of Applicant's recited stretch-resistant device, which is to **restrict extension and stretching of the outer skin tissue of the sole of the foot and to restrict stretching of the plantar fascia**. The "low-tack" adhesive and resilient structure of Burgess would inherently be incapable of performing the identical function recited in Applicant's claims. As a result of "teaching away", Burgess does not

teach each and every element of the claimed invention and therefore the Burgess reference does not anticipate this invention.

With regard to claims 45 and 46, Burgess does not show or suggest a stretch-resistant sole member having a thickness of less than 30 mils (0.762 mm); or a stretch-resistant resistant sole member formed of a single layer of fabric material having a uniform thickness of less than 30 mils (0.762 mm).

Instead, Burgess teaches that the foot protector "preferably has a thickness in the range of about 1 mm to about 5 mm, with a thickness of about 2 mm being particularly advantageous", and that a thickness of about 1 mm to about 5 results in a foot protector that has enough "resilience, or cushion effect", "to provide comfort to the foot" of the wearer. Thus, converting Burgess's mm to mils, Burgess teaches a desirable thickness in the range of from about **39.370 mil** (1mm) to about **196.850 mil** (5 mm), with a preferred thickness of about **78.740 mil** (2mm). Thus Burgess would lead one skilled in the art to provide a resilient cushioning member having a thickness **greater** than recited in Applicant's claims, in order to achieve the required "resilience, or cushion effect" and "comfort to the foot". Applicant's thickness of **less than 30 mils** allows the wearer to pull a sock over the foot and to wear shoes while the device is adhered to the sole of the foot, which would difficult or impossible with the Burgess device.

The remarks set forth above regarding claim 44 except those regarding "excluding the portion of the foot under the four small toes" are equally applicable to amended base claim 56. Claim 56, contains the limitation of "**in the region of the foot extending from the heel to the proximal end of the four small toes**". Claim 56 additionally, includes a structural element of "**at least one thin flexible ~~stretch-resistant~~ strap or tab having an end extending outward from said sole engaging surface beyond the sole of the foot"**. The strap or tab when adhered to the outer skin surfaces of the foot provides additional resistance to lateral and longitudinal forces and assists in maintaining said device in the installed position. Support for the strap or tab terminology and its function is found in paragraphs 0038 through 0044, and 0059, of the application as originally filed, and does not constitute new matter. **Burgess covers all sections of the sole of the foot and Burgess does not show or suggest any straps** whatsoever. Therefore, Burgess does not teach each and every element of the present invention as claimed in claim 56. Burgess therefore does not anticipate this invention.

The remarks set forth above regarding claim 56 are equally applicable to claims 62, which contains essential structural and functional features of base claim 56 but presented as method claims directed toward a method for **treating plantar fasciitis or for preventing damaging tensile stress in** the plantar fascia of a human. Burgess does not suggest a method for treating plantar fasciitis or for preventing damaging tensile stress in the plantar fascia of a human. Burgess does not teach each and every element of the claimed invention and therefore the Burgess reference does not anticipate the method of claim 62.

The remarks set forth above regarding claim 62 are equally applicable to claims 66 , includes the further step of **adhering opposed ends of a thin flexible front strap extending laterally outward from opposite sides of said stretch-resistant sole engaging surface** to the outer skin tissue on the sides or top of the ball portion of the foot in a position to overlap at least a portion of the top of the foot above the ball portion of the foot so as to provide support to the area adjacent to the ball of the foot to reduce tension forces transferred between the ball of the foot and the plantar fascia. **Burgess does not show or suggest any straps** whatsoever. Therefore, the Burgess reference does not teach each and every element of the present invention.

Therefore, it is respectfully submitted that Burgess clearly does not disclose **all of the same elements in exactly the same situation and united in the same way to perform the identical function as** recited in amended claims 44, 45, 46, 56, 62 and 66, and therefore claims 44, 45, 46, 56, 62 and 66 are not anticipated by the Burgess reference, and should now be allowable claims.

The rejections under 35 U.S.C. 103(a)

> "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).
>
> References may not be combined to show obviousness in the absence of something in the prior art suggesting the desirability of the proposed combination. In re Bond, No. 90-1023, slip op. at 6 (Fed. Cir. Aug. 3, 1990); In re Grabiak, 769 F.2d 729 (Fed. Cir. 1985).
>
> References cannot properly be combined with each other when such would result in destroying that on which the invention of one of the references is based. Ex parte Hartmann, 186 U.S.P.Q. 298,301.
>
> If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.

In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The court held that the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." (270 F.2d at 813, 123 USPQ at 352.).

The proposed combination of Turtzo in view of Burgess

With regard to the rejection of claims 44, 48-54, and 56-61 under 35 U.S.C. §103(a) as being unpatentable over Turtzo (2002/0188239 - now US 6,699,209) in view of Burgess, during the November 21, 2007 interview with the Examiner and Supervisory Examiner, an agreement was reached with respect to proposed amendments to base claims 44 and 56. More particularly, claims 44 and 56, if amended to include the quality of adhesive to intended use limitation and **thin flexible** stretch resistant sole member limitation, would read over the Turtzo reference, and favorable consideration would be given upon further updated search. It is respectfully submitted that the combination of structural and functional features, as set forth in the amended claims, now include the quality of adhesive and thin flexible stretch resistant sole member as discussed in the interview.

It is respectfully submitted that the proposed combination and modification is not suggested and, even if combined, does not suggest the device as recited in claims 44, 48-54, and 56-61, and that substantial reconstruction and redesign of the elements shown in the references as well as a change in the basic principle under which they were designed to operate would be required in order to incorporate the features of the claim.

The primary reference Turtzo is a foot splint for treatment of plantar fasciitis having straps, the splint comprises an elongated "rigid plate" interposed between a first and a second "resilient" layer and has an angularly elevated proximal end for securing the heel in an elevated position relative to the mid-portion of the foot, and an angularly elevated distal end for securing the user's toes in an elevated position relative to the mid-portion of the foot for "**stretching the plantar fascia of the foot**". In operation, the foot is placed in the upper surface of the splint with the patient's toes placed in a dorsiflexed position along elevated distal end, and the patient's heel is raised along the elevated proximal end. By dorsiflexing the patient's toes, "the patient's plantar fascia is thereby stretched". Upon attaching a strap about the foot and attaching heel-retaining portion to the strap, a three-point pressure system is established that "**provides maximum stretch to the patient's plantar fascia**".

It is respectfully submitted that both references "teach away" from the desirability of the proposed combination, and operate on a different principle from Applicant's claimed device and method.

With regard to base claims 44 and 56 Turtzo and Burgess both teach away from the desirability of providing an orthotic plantar fascia support device for of a human foot, and the desirability of **a device having a thin flexible stretch-resistant** sole member with a sole engaging surface sized and shaped to engage the outer skin tissue on the sole of the foot and extend along at least a portion of the plantar fascia region of the sole, in the region of the foot extending from the heel of the foot **to the proximal end of the smaller toes**; and an adhesive layer on the sole engaging surface for adhering the device directly to the outer skin tissue on the sole of the foot. Neither reference teaches or suggests a device having the combination of an adhesive layer of sufficient adhesive strength to maintain the device in place on the outer skin tissue on the sole of the foot and a stretch-resistant sole engaging surface sufficiently stretch-resistant to restrict extension and stretching of the outer skin tissue on the sole of the foot, when adhered thereto, **such that tension forces applied to the plantar fascia are shared with said outer skin tissue, said adhesive layer and said sole engaging surface to restrict extension and stretching of the plantar fascia.**

Instead, Tortzo teaches that by dorsiflexing the patient's toes, "the patient's plantar fascia is thereby stretched", and upon attaching a strap about the foot and attaching heel-retaining portion to the strap, a three-point pressure system is established that "provides maximum stretch to the patient's plantar fascia". The secondary reference Burgess teaches that the "resilient" sheet "allows increased mobility" as the foot protector is able to adjust to "flexing of the foot" during normal walking or running movements "without inhibiting foot movement."

Unlike applicant's claimed device, Turtzo teaches an elongated "rigid plate" between a pair of "resilient" layers and provides angularly elevated proximal end for securing the heel in an elevated position relative to the mid-portion of the foot, and an angularly elevated distal end for securing the user's toes in an elevated position relative to the mid-portion of the foot for "stretching the plantar fascia of the foot". Turtzo teaches placing the patient's toes placed in a dorsiflexed position along elevated distal end, and the patient's heel in a raised position along the elevated proximal end. The secondary reference Burgess teaches a "resilient" sheet or "cushion member" of substantially uniform thickness that has enough "resilience, or cushion effect", "to

provide comfort to the foot" of the wearer that "allows increased mobility" as the foot protector is able to adjust to "flexing of the foot" during normal walking or running movements "without inhibiting foot movement."

Although the sandwiched "rigid plate" member of Turtzo may be stretch-resistant, it clearly is not flexible, and it is disposed between a pair of "resilient layers", and it is not adhered to the sole of the foot. There is no suggestion in Turtzo, nor would there be any reason, to modify the structure to be flexible, and to adhere it to directly to the outer skin tissue of the foot.

Unlike Applicant's device, Tutzo teaches a device that places the patient's toes in an elevated dorsiflexed position and the patient's heel in a raised position relative to the mid-portion of the foot to establish a three-point pressure system for "stretching the plantar fascia of the foot" and that "provides maximum stretch to the patient's plantar fascia". The secondary reference Burgess teaches a "resilient" sheet or "cushion member" that "allows increased mobility" and is able to adjust to "flexing of the foot" during normal walking or running movements "without inhibiting foot movement."

Thus, both references teach providing devices having a different structure and that perform **the opposite function** of Applicant's recited device and method, which is to **restrict extension and stretching of the plantar fascia**, and the structures of both references would be incapable of functioning in the manner recited in Applicant's claims.

Therefore, it is respectfully submitted that base claims 44 and 56 read over the proposed combination of Turtzo and Burgess, as discussed above and in the interview, and include a combination of structural features operating together as a whole and functioning in a manner not suggested by the references alone or in combination, and should now be allowable base claims.

With regard to claims 48-54, Turtzo teaches at least one elongated strap member (14) that extends from the periphery of the rigid plate and a heel-retaining portion (40) interposed between the rigid plate (12) and the first resilient layer (16), which extends upwardly along the elevated proximal region (36) and is connected to the strap member (14) by adjustable straps (42). The first strap (14) is attached about the foot and the heel-retaining portion (40) is attached to the first strap (14) by the adjustable straps (42) to achieve a three-point pressure system for securing the mid-portion of the foot to the upper surface with the toes and the heel of the foot elevated for providing "maximum stretch to the plantar fascia". The heel retaining portion (40) of Turtzo is not a strap, and appears to be merely a cushion.

The secondary reference Burgess does not show or suggest an arch strap, a heel strap, or a front strap.

There is no suggestion in Turtzo for adhering an arch strap **to the outer skin tissue, to provide resistance to vertical and lateral movement of the talus, the navicular, the cuneiform, or the cuboid of the foot** and **reducing vertical and lateral tension forces applied to the plantar fascia** from forces on the arch of the foot which push the bones of the foot downwardly. There is also no suggestion in Turtzo for **adhering a heel strap** directly to the outer skin tissue of the heel of the foot. There is also no suggestion in Turtzo for providing **a front strap** having opposed ends extending laterally outward from opposite sides the device and **adhering the front strap directly to the outer skin tissue on the sides or top of the ball portion of the foot to provide support to the area adjacent to the ball of the foot to reduce tension forces transferred between the ball of the foot and the plantar fascia.**

Turtzo clearly teaches away from these features and the desirability of such an operation. Turtzo teaches a completely reverse principle of operation in that the strap (14) is used to pull the arch vertically downward and induce (rather than reduce) tension forces to provide "maximum stretch to the plantar fascia". The device taught by Turtzo would also induce (rather than reduce) tension forces transferred between the heel and the plantar fascia, and would induce (rather than reduce) tension forces transferred between the ball of the foot and the plantar fascia. The secondary reference Burgess does not show or suggest an arch strap, a heel strap, or a front strap.

It is respectfully submitted that in order to meet the structural and functional features recited in claims 44, 48-54, and 56-61, one would have to eliminate the "rigid plate", the "resilient" layers, and the angularly elevated proximal and distal ends which elevate the toes and heel relative to the mid-portion of the foot (three-point pressure system), as taught by Turtzo, and eliminate the "resilient" sheet "cushion member" structure of Burgess. One would also have to completely reverse the principle of operation of "stretching the plantar fascia of the foot" and "providing maximum stretch to the patient's plantar fascia", as taught by Turtzo, and the principle of operation of "allowing increased mobility" and ability to adjust to "flexing of the foot" during normal walking or running movements "without inhibiting foot movement", as taught by Burgess. Thus, such a modification would render both references unworkable for their intended purpose and would change their principle of operation.

Therefore, it is respectfully submitted that claims 44, 48-54, and 56-61 contain a combination of elements working together as a whole and that function in a manner not anticipated or obvious based on the teachings of Turtzo and Burgess, alone or in combination, and should now be allowable claims.

The proposed combination of Burgess in view of Turtzo

With regard to the rejection of claims 63, 64 and 65 under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Turtzo, the remarks set forth above are equally applicable to claims 63, 64 and 65, which include all of the features of base claim 62, plus additional structural and functional features directed toward the straps and method of attachment that are not shown or suggested by the proposed combination and modification of Burgess and Turtzo.

Neither reference teaches or suggests a method for **restricting extension and stretching of the plantar fascia of a human foot**. The primary reference **Burgess does not show or suggest an arch strap, a heel strap, or a front strap**. The secondary reference Turtzo clearly teaches away from the structural and functional features of the straps. As discussed above, Turtzo teaches completely the reverse principle of operation in that the strap (14) is used to pull the arch vertically downward and induce (rather than reduce) tension forces to provide "maximum stretch to the plantar fascia". The device taught by Turtzo would also induce (rather than reduce) tension forces transferred between the heel and the plantar fascia, and would induce (rather than reduce) tension forces transferred between the ball of the foot and the plantar fascia.

It is respectfully submitted that the proposed combination and modification is not suggested and, even if combined, does not suggest the method recited in claims 63, 64 and 65, and that substantial reconstruction and redesign of the elements shown in the references as well as a change in the basic principle under which they were designed to operate would be required, and therefore claims 63, 64 and 65 should now be allowable.

The proposed combination of Burgess in view of Huddleston et al

With regard to claim 47 under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Huddleston et al (US 4,997,709), it is respectfully submitted that the proposed combination and modification is not suggested and, even if combined, does not suggest the device as recited in claim 47.

Claim 47 contains all of the structural and functional features of base claim 44 plus additional structural limitations directed toward the stretch-resistant properties of Applicant's device wherein the stretch-resistant sole engaging surface has less than 15% elongation when subjected to a tensile load (lb/in-width) approximately equivalent to 25 pounds/inch in accordance with ASTM D3759.

The primary reference Burgess teaches away from the desirability of a thin flexible stretch-resistant device having less than 15% elongation when subjected to a tensile load approximately equivalent to 25 pounds/inch. Burgess teaches a "resilient" sheet or "cushion member" of substantially uniform thickness that has enough "resilience, or cushion effect", "to provide comfort to the foot" of the wearer that "allows increased mobility" as the foot protector is able to adjust to "flexing of the foot" during normal walking or running movements "without inhibiting foot movement."

The secondary Huddleston et al reference (US 4,997,709) is directed toward a pressure-sensitive adhesive meeting Underwriter Laboratories, Inc. 181A requirements and specifications for foil tapes for use with rapid fiberglass air ducts, including the average tensile strength requirements as determined in accordance with the Standard Test Method for Tensile Strength and Elongation of Pressure-Sensitive Tapes, ASTM D3759-83.

Merely because foil tapes having an adhesive meeting the average tensile strength requirements as determined in accordance with the ASTM D3759-83 Standard Test Method for Tensile Strength and Elongation of Pressure-Sensitive Tapes are known, it does not necessarily follow that it would be obvious employ this feature in a device having all of the features of base claim 44 working together as a whole.

Claim 47 should be considered in its entirety including all of the limitations of base claim 44. Applicant is not attempting to claim the stretch-resistant properties independently apart from the whole combination, nor suggesting that this individual feature be withdrawn from the public domain, but is claiming it only in combination with the specific combination of structural and functional features recited in base claim 44. Even if it were legitimate to combine and modify the references, the proposed combination would not produce all of the elements of claim 47 including all of the structural and functional features recited in base claim 44 working together as a whole.

Therefore, it is respectfully submitted that dependent claim 47 including all of the structural and functional features recited in base claim 44 working together as a whole should be allowable.

The proposed combination of Burgess in view of Dalton

With regard to the rejection of claim 55 under 35 U.S.C. §103(a) as being unpatentable over Burgess in view of Dalton (2004/0118017 - now US 7,107,705), it is respectfully submitted that the proposed combination and modification is not suggested and, even if combined, does not suggest the device as recited in claim 55.

Dalton teaches a replaceable "resilient insole" that fits inside of a shoe and is made from a base of "molded foam" material and provided with a raised edge along the arch and around the heel. In a preferred embodiment, the base is covered with non-woven fabric top sheet with a moisture barrier film layer disposed there between, and a series of air ports extend through the base and the top sheet to permit air circulation above and below the insole. Also, in a preferred embodiment, the fabric top sheet is treated with an antibacterial agent, which in combination with the moisture barrier reduces odor causing bacteria and fungus.

Claim 55 includes all of the features of base claim 44 working together as a whole. As discussed above, Burgess teaches away from the desirability of a thin flexible device having a stretch-resistant sole engaging surface with all of the features recited in base claim 44. Dalton also teaches away from the desirability of a thin flexible stretch-resistant device having a stretch-resistant sole engaging surface with all of the features recited in base claim 44.

Merely because insole devices such are Dalton treated with an antibacterial agent are known, it does not necessarily follow that it would be obvious employ them in a device having all of the features of base claim 44 working together as a whole to restrict stretching of the plantar faciitis.

Claim 55 should be considered in its entirety including all of the limitations of base claim 44. Applicant is not attempting to claim the antibacterial agent independently apart from the whole combination, nor suggesting that this individual feature be withdrawn from the public domain, but is claiming it only in combination with the specific combination of structural and functional features recited in base claim 44. Even if it were legitimate to combine and modify the references, the proposed combination would not produce all of the elements of claim 55 including all of the structural and functional features recited in base claim 44 working together as a whole.

Therefore, it is respectfully submitted that dependent claim 55 including all of the structural and functional features recited in base claim 44 working together as a whole should be allowable along with base claim 44.

Accordingly, in view of the foregoing amendments, explanations and remarks, and the discussions during the personal interview with the Examiner, it is respectfully requested that claims 44-66 be allowed, and that this application be passed to issue.

Three (New) dependent claims numbering 67, 68, and 69 have been added which include the limitations of their corresponding base claims 56, 60 and 63. A fee has been included to cover these three dependent claims. It is respectfully requested that these claims be examined.

It is also respectfully requested that the proposed October 30, 2007 "Draft Amendment For Interview" be removed from the "Public Pair" database and not be published for the record for the reasons set forth in the beginning of the remarks section.

This is amendment is presented by the inventor *pro se*, and if any further changes to the amendatory language of the claims is required, a telephone interview with the Examiner is respectfully requested. The undersigned may be reached by telephone at (713) 299-7263.

Respectfully submitted,

Donald P. Bushby

Donald P. Bushby
Applicant

1211 Nagle Street
Houston, TX 77018
(713) 299-7263